REMARKS

Claims 134, 135, 137-147, 149-169, and 171-176 are pending in the present application and stand rejected. Applicants herein amend Claims 134, 147, 149-158, 168, 175, and 176. No new matter is added. Further examination and review in view of the amendments and remarks below are respectfully requested.

Claim Rejections – 35 U.S.C. § 101

Claims 158-167 and 175-176 stand rejected under 35 U.S.C. § 101. The Examiner stated that "these claims recite various mechanisms that may be implemented solely in software and are thus software per se." (Office Action of 4/19/07, p. 2.) Applicants respectfully disagree with that characterization.

Claim 158 recites in part:

> a recording mechanism configured to record the automatically selected video programs based on the preference information; and
>
> an automatic overwriting mechanism to automatically overwrite stored digital data content with the automatically selected video programs according to a defined criteria.

A "recording mechanism configured to record" perforce comprises hardware to perform the recording, and thus can not be implemented solely in software. For example, the embodiment depicted in Figure 2 comprises "a DVD platter 46 (e.g., a 10-disc platter) which is utilized as the write/read mechanism for recording and playback of movies or other content. (Specification, p. 15, ll. 24-26.) Similarly, an automatic overwriting mechanism to automatically overwrite stored digital data content comprises hardware to perform the overwriting.

For at least the reasons presented above, Applicants contend that the device claimed in claim 158 is not solely software per se, and accordingly request that the rejection of claim 158 under 35 U.S.C. § 101 be withdrawn.

Claim 175 recites in part:

> a mechanism configured to automatically overwrite stored digital data content with the automatically selected video programs according to a defined criteria.

As discussed above in connection with claim 158, a mechanism configured to automatically overwrite stored digital data content comprises hardware to perform the

overwriting. Thus, for at least the reasons presented above, Applicants contend that the device claimed in claim 175 is not solely software per se, and accordingly request that the rejection of claim 175 under 35 U.S.C. § 101 be withdrawn.

Claims 159-167 each depend, directly or indirectly, from claim 158. Claim 176 depends from claim 175. Applicants respectfully submit that for at least the reasons explained above with respect to independent Claims 158 and 175, the dependent claims a not directed to software per se and, accordingly, respectfully request that the rejection of these claims under 35 U.S.C. § 101 be withdrawn.

Claim Rejections – 35 U.S.C. § 103

Claims 134-135, 137-140, 145-147, 149-152, 158-160, 165-169, and 171-176 of which Claims 134, 158, 168, and 175 are the independent claims, currently stand rejected under 35 U.S.C. § 103 as allegedly being unpatentable over Russo (U.S. Pat. No. 6,025,868) and Graves (U.S. Pat. No. 5,410,344) and Beach (U.S. Pat. No. 6,728,713).

Independent claim 134 as amended recites in part:

> providing a mechanism to automatically select for storage in a
> storage medium at the consumer location video programs from
> the plurality of video programs having a defined degree of
> similarity between classification information and preference
> information;

The claim has been amended to clarify that the automatic selection is for storage in a storage medium at the consumer location. For example, embodiments are described in the specification as:

> In preferred embodiments, video/audio content is blanket
> transmitted ... The transmission is directly to each customer's
> receiving dish or antenna which is linked to the customer's user
> station where selected movies are stored on DVD RAM discs
> or CD's in a multiple disc platter, or on a hard drive ...
> (Specification, p. 4, l. 22 – p. 5, l. 3.)

> A user station is provided at each customer household, the user
> station including means permitting the customer household to
> preselect desired transmitted movies for recording.
> (Specification, p. 8, l. 25 – p. 9, l. 2.)

The Examiner has cited Graves, col. 4, ll. 31-35 and col. 7, ll. 55-62 as allegedly teaching "providing mechanism to automatically select video programs having a defined degree of

similarity between the classification information and the preference information." (Office Action of 4/19/07, p. 4.) Applicants contend that Graves does not teach "providing a mechanism to automatically select **for storage in a storage medium at the consumer location** video programs." Graves states: "Programs receiving a favorable grade are stored in a preferred viewing file 30*a*." (Graves, col. 6, ll. 12-14.) But, Graves does not mean that the video program itself is stored in the preferred viewing file, but rather "a **program identifier for the program** corresponding to the grade is stored in the preferred viewing file 30*a*, thereby updating the file with the new program." (Graves, col. 6, ll. 40-42, emphasis added.) Graves further states that "the viewer may display the contents of file 30*a* at his or her leisure, **thereby notifying the viewer** of the selected programs for their viewing pleasure." (Graves, col. 6, ll. 49-52, emphasis added.) Graves does not teach selecting video programs for storage in a storage medium at the consumer location.

For at least the reasons explained above, Applicants respectfully submit that the cited references, either alone or in combination, do not teach the recitations of claim 134 and, therefore, claim 134 is patentably defined over the cited art. Accordingly, Applicants respectfully request that the rejection of claim 134 be withdrawn.

Claims 135, 137-140, and 145 each depend, directly or indirectly, from claim 134. Claims 146, 147, and 149-157 each recite a computer readable medium having computer executable instructions stored thereon for performing the methods of claim 134 or claims that depend, directly or indirectly, from claim 134. Applicants respectfully submit that for at least the reasons explained above with respect to independent claim 134, claims 135, 137-140, 145-147, and 149-157 are patentably defined over the cited art and, accordingly, respectfully request that the rejection of these claims be withdrawn.

Independent claims 158, 168, and 175 have been amended to clarify that the automatic selection is for storage in a storage medium at the consumer location. Thus, for at least the reasons explained above in relation to claim 134, Applicants respectfully submit that claims 158, 168, and 175 are patentably defined over the cited art. Accordingly, Applicants respectfully request that the rejection of claims 158, 168, and 175 be withdrawn.

Claims 159-160, 165-167, 169, 171-174, and 176 each depend, directly or indirectly, from one of claims 158, 168, or 175. Applicants respectfully submit that for at least the reasons explained above with respect to independent claims 158, 168, and 175, the dependent

claims are patentably defined over the cited art and, accordingly, respectfully request that the rejection of these claims be withdrawn.

Claims 141 and 153 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Russo, Graves, and Beach and further in view of Rabowsky (U.S. Pat. No. 6,141,530). Claim 141 depends from claim 134. Claim 153 recites a computer readable medium having computer-executable instructions stored thereon for performing the method of claim 141. Thus, for at least the reasons explained above in relation to claim 134, Applicants respectfully submit that claims 141 and 153 are patentably defined over the cited art. Accordingly, Applicants respectfully request that the rejection of claims 141 and 153 be withdrawn.

Claims 142-144, 161-163, and 154-156 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Russo, Graves, and Beach and Rabowsky (U.S. Pat. No. 6,141,530), and further in view of Banker (U.S. Pat. No. 6,005,938).

Claim 142-144 each depends indirectly from claim 134. Claims 154-156 each recite a computer readable medium having computer-executable instructions stored thereon for performing the method of claim 142-144 respectively. Thus, for at least the reasons explained above in relation to claim 134, Applicants respectfully submit that claims 142-144 and 154-156 are patentably defined over the cited art. Accordingly, Applicants respectfully request that the rejection of claims 142-144 and 154-156 be withdrawn.

Furthermore, claim 143 recites in part:

> wherein the time-based code keys A encoded into the transmitted video programs are correlated with **periodic time-based key codes B that are blanket transmitted to the plurality of consumer locations** and time-based codes C that are provided to consumer locations within the plurality of consumer locations that are in good standing, wherein a customer can only view a video program if all three codes keys A, B and C have been received. (emphasis added.)

Banker teaches the use of entitlement control messages ("ECMs").

> In association with encrypted service instance 117, service provider 105 sends a series of entitlement control messages (ECMs) 119. Each ECM 119 corresponds to a part of encrypted service instance 117. An ECM contains two kinds of information: one kind identifies the service that encrypted service instance 117 is an instance of; the other, shown in FIG.

> 1 as decryption information (DI) 120, is information which,
> when combined with the session key 110 stored in SEMI 115,
> permits decryption of encrypted service instance 117 in service
> subscriber device 113.

(Banker, column 1, line 67 – column 2, line 10.)

Banker also teaches the use of entitlement messages ("EMMs").

> There are two kinds of EMM: a decryption EMM (DEMM) 108
> which contains a session key (SK) 10 that will be used to
> decrypt instances of one or more services to which the
> subscriber is entitled, and an authorization EMM (AEMM) 109
> which contains a specification of the services the subscriber is
> entitled to.

(Banker, column 1, lines 51 – 56.)

Importantly, Banker teaches that "EMMs are intended for individual subscribers."

(Banker, column 6, lines 55 – 56.)

Applicants respectfully contend that Banker does not teach the use of "periodic time-based code keys B that are blanket transmitted to the plurality of consumer locations" such as recited in claim 143. The application describes an embodiment of the periodic time-based code keys B as:

> ... time-based security codes B (discussed below) are
> transmitted at periodic intervals (e.g., every ten minutes, every
> hour or every day, as deemed most desirable by the video
> distribution system operator) ...

(Application Specification, p. 17, lines 9 – 13.)

> A second code key B comprises a 32-bit code for each month
> chosen by the video distribution system operator at the
> beginning of each month. Code keys B for all available movies
> are blanket transmitted to customer households each month by
> the data transmission means, preferably, satellite.

(Application Specification, p. 21, lines 3 – 7.)

The ECMs, as disclosed by Banker, are not *periodic*, but rather are transmitted with each "service instance." The EMMs, as disclosed by Banker, are not *blanket transmitted to the plurality of consumer locations*, but rather are intended for individual subscribers. Thus, none of the code messages disclosed by Banker teach "periodic time-based code keys B that are blanket transmitted to the plurality of customer locations", as recited in claim 143. The

other three cited reference, Russo, Walters, and Rabowsky, appear to be silent on the issue of using three time-based code keys and have not been cited for such.

For at least the reasons explained here, as well as those explained above with respect to claim 134, Applicants respectfully submit that the cited references, either alone or in combination, do not teach the all of the recitations of claim 143 and, therefore, claim 143 is patentably defined over the cited art and, accordingly, respectfully request that the rejection of claim 134 be withdrawn.

Claim 155 recites a computer readable medium having computer executable instructions stored thereon for performing the method of claim 143. Applicants respectfully submit that for at least the reasons explained hear with respect claim 143 and for the reasons explained above with respect to claim 134, claim 155 is patentably defined over the cited art and, accordingly, respectfully request that the rejection of these claims be withdrawn.

Conclusion

As explained above, Applicants submit that claims 134, 135, 137-147, 149-169, and 171-176, which are now pending in the Application, are patentably defined over the cited art. The Examiner is respectfully urged to reconsider the Application. Favorable consideration and passage to issue of the application is earnestly solicited. If the Examiner should, however, find the claims as presented herein are not allowable for any reason or if the Examiner has any questions, comments, or suggestions that would expedite the prosecution of the present case, the Applicants undersigned representative would sincerely welcome a telephone conference at (206) 903-2475.

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/ Kenneth E. Plochinski /
Kenneth E. Plochinski
Registration No. 59,166

Woodcock Washburn LLP
Cira Centre
2929 Arch Street, 12th Floor
Philadelphia, PA 19104-2891
Telephone: (215) 568-3100
Facsimile: (215) 568-3439